

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | CASE NO: 8:07CR299 |
| |) | |
| Plaintiff, |) | |
| |) | Omaha, Nebraska |
| vs. |) | March 10, 2008 |
| |) | 10:17 a.m. |
| HOMER T. CAVE, |) | |
| |) | |
| Defendant. |) | |

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE F.A. GOSSETT
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

| | |
|--------------------|--|
| For the Plaintiff: | Michael Norris ASSISTANT UNITED STATES ATTORNEY 1620 Dodge Street Suite 1400 Omaha, NE 68102 |
| For the Defendant: | Ernest H. Addison, Jr. ADDISON, MILLER LAW FIRM 6842 Pacific Street Omaha, NE 68106 |

Proceedings recorded by electronic sound recording, transcript
produced by transcriptionist.

March 10, 2008

(Whereupon the following proceedings
took place in open court at 10:17 a.m.:)
(Call to Order of the Court.)

THE COURT: Please be seated. Good morning.

Case number 8:07CR299, United States of America
versus Homer T. Cave.

Counsel for the Government please identify.

MR. NORRIS: Good morning, Your Honor. For the
United States I'm Michael Norris.

THE COURT: Good morning. For the Defendant, who's
present?

MR. ADDISON: Good morning, Judge. Ernest Addison,
Jr., appearing on behalf of Mr. Cave. For the record, he
presents himself to you today.

THE COURT: Good morning, Mr. Addison.

Good morning, Mr. Cave.

THE DEFENDANT: Good morning, sir.

THE COURT: Mr. Cave, we're here because you, through
your attorney, have caused to be filed a petition to enter a
plea of guilty and a plea agreement. The plea agreement notes
that you will plead guilty to Count I of the indictment, which
Count I of the indictment is a -- excuse me just a minute.

MR. NORRIS: I have my copy if it's easier.

THE COURT: No, I'll find it.

1 Count I of the indictment is a charge of receipt and
2 distribution of child pornography.

3 Is that as you understand it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Cave, we're going to be going over a
6 petition to enter a plea of guilty, the plea agreement. We're
7 going to go over several other things. They're all very
8 important to you. I want to reach an understanding with you,
9 if possible, and that is that if anything occurs at this
10 hearing that you do not understand, for instance if I or anyone
11 else use words, phrases or sentences that you do not
12 understand, that we will stop the hearing, give you an
13 opportunity to speak with Mr. Addison off the record. That
14 means just the two of you would be party to that conversation.
15 Mr. Addison is experienced in these matters. I believe he will
16 be able to answer your questions. If for some reason you still
17 have questions after you talk to Mr. Addison, you can address
18 the Court, and I'll attempt to answer the questions.

19 Can we reach that agreement?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Mr. Cave, I'm a United States
22 magistrate judge, not a United States district judge. You have
23 a right to have this hearing conducted before a United States
24 district judge. That would be Judge Smith Camp. She will be
25 your sentencing judge in this case.

1 My question to you is do you consent to me conducting
2 the plea hearing this morning?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: I'll accept the consent as freely and
5 voluntarily given.

6 Mr. Cave, would you please stand and raise your right
7 hand to be sworn by the courtroom deputy.

8 COURTROOM DEPUTY: Do you solemnly swear or affirm
9 that the testimony you are about to give will be the truth to
10 the best of your knowledge and belief?

11 THE DEFENDANT: I do.

12 THE COURT: Please be seated.

13 Mr. Cave, you're under oath. I have to warn you that
14 if you make false statements under oath, you could be charged
15 with perjury or making false statements. Do you understand
16 that you are under oath and there are penalties for making
17 false statements under oath?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Cave, would you state your full name
20 for the record.

21 THE DEFENDANT: Homer T. Cave.

22 THE COURT: And you're the Defendant named in the
23 indictment, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you, sir?

1 THE DEFENDANT: Thirty-one, almost 32.

2 THE COURT: Would you spell your full name for us.

3 THE DEFENDANT: H-o-m-e-r, and the last name is
4 spelled C-a-v, as in Victor, e.

5 THE COURT: Mr. Cave, how far in school did you go in
6 what we might call formal education?

7 THE DEFENDANT: I have some college, sir.

8 THE COURT: What type of work have you done in your
9 working life?

10 THE DEFENDANT: Just formerly, I was a United States
11 Marine.

12 THE COURT: Have you ever been in a hospital or under
13 a doctor's care for any type of mental illness?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you ever been treated for a chemical
16 dependency or abuse, such as an addiction to alcohol or drugs?

17 THE DEFENDANT: No, sir.

18 THE COURT: In the last 72 hours, which is three
19 days, have you consumed any alcohol or taken any controlled
20 substances?

21 THE DEFENDANT: No, sir.

22 THE COURT: In answer to the question in your
23 petition to enter a plea of guilty have you ever been under a
24 doctor's care for any mental or emotional issues, you answer
25 something in 2007 and 2008, but I can't read it.

1 THE DEFENDANT: Correct, sir. It's I had an
2 addiction to pornography.

3 THE COURT: All right. So were you treated for that?

4 THE DEFENDANT: I'm still being treated for that,
5 sir, yes.

6 THE COURT: All right. Okay.

7 Are you acquainted with the terms inpatient and
8 outpatient?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is your treatment inpatient or
11 outpatient?

12 THE DEFENDANT: It is outpatient.

13 THE COURT: Have you ever been treated inpatient for
14 that?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Are you taking any
17 medication, prescription or nonprescription?

18 THE DEFENDANT: No, sir.

19 THE COURT: As you -- Are you -- Let me ask you.
20 You're not taking any medication, correct?

21 THE DEFENDANT: Correct, sir.

22 THE COURT: Is there anything that's been prescribed
23 to you that you're just not taking, maybe you never had the
24 prescription filled, or you have the prescription and you're
25 just not taking it?

1 THE DEFENDANT: No, sir.

2 THE COURT: As you sit here in open court this
3 morning, do you believe you're thinking clearly, clearly enough
4 to make important decisions in your life?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: Mr. Cave, have you received a copy of the
7 indictment? That's the charging document in this case.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You're entitled to have that read out
10 loud in open court, or you may waive, which means do without
11 the reading. Do you wish it read, or do you waive the reading?

12 THE DEFENDANT: Waive it, sir.

13 THE COURT: Have you discussed with Mr. Addison, your
14 lawyer, the nature of the crimes charged against you in the
15 indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Cave, if you went to trial on Count
18 I, the Government would have to prove certain things in order
19 to have you found guilty or prove you guilty of Count I. They
20 would have to prove beyond a reasonable doubt the following
21 elements:

22 That on or about the 6th day of June, 2007, in the
23 District of Nebraska, you, the Defendant, did knowingly receive
24 and distribute visual depictions, that is digital and computer
25 images, in files that had been mailed, shipped and transported

1 in interstate and foreign commerce by any means, including by
2 computer. The production of such visual depictions having
3 involved the use of a minor engaging in sexually explicit
4 conduct that were depictions of such conduct. In violation of
5 Title 18, United States Code, 2252(A)(a)(2).

6 Do you have any question about what the Government
7 would have to prove in order to convict you of Count I?

8 THE DEFENDANT: No, sir.

9 THE COURT: There are certain penalties that are set
10 out in this matter for a plea or conviction based upon a
11 finding of guilt as to Count I. The possible penalties that
12 you would be exposed to would be imprisonment of not less than
13 five years nor more than 20 years, a fine not to exceed
14 \$250,000, or both such imprisonment and fine, at least five
15 years of supervised release, and a \$100 special assessment.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any question about the
18 statutory penalties that you're facing in this case?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you understand, Mr. Cave, that the
21 sentencing judge, Judge Smith Camp, will not be able to
22 determine what sentence to give you until a presentence
23 investigation report is completed and until you and your lawyer
24 and the Government's lawyer have an opportunity to see that
25 report, which is in writing and object to things that are in

1 it? Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you also -- Well, let me ask you this.
4 Has Mr. Addison talked to you about the sentencing guidelines?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that sentencing
7 guidelines have been determined by the United States Supreme
8 Court to be advisory not mandatory? This means that the
9 sentencing judge must consult but is not required strictly to
10 follow the sentencing guidelines when setting out the sentence
11 and deciding the sentence to give you. On the other hand, she
12 may determine that the sentence called for under the guidelines
13 is the sentence that she will give. She as the sentencing
14 judge has the freedom to make that choice. Do you understand
15 that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you also, therefore, understand that
18 the sentence that will be imposed upon you at sentencing could
19 be different from the sentence that you or you and your
20 attorney believe might or will be imposed. Do you understand
21 that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, in your plea agreement, we're going
24 to talk about the plea agreement in more detail later -- Well,
25 let me go back and let me strike that.

1 Do you understand that both you and the Government
2 have a right to appeal from any sentence that's imposed in this
3 case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand parole has been
6 abolished in the federal system, and you will not be released
7 on parole?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if you're
10 convicted as a result of a plea of guilty to Count I, you'll be
11 required to pay a special assessment in the statutory amount of
12 \$100?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that if you're
15 convicted as a result of Count I, the Court could, as
16 previously mentioned, impose upon you a fine of not more than
17 \$250,000?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Cave, if you're convicted as a result
20 of a plea of guilty, that in addition to a sentence of
21 imprisonment, the Court is required to include a term of
22 supervised release which must be completed after you serve your
23 sentence of imprisonment. That term of supervised release can
24 be at least five years but not more than life. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, do you understand that if your
3 conditions of supervised release are violated, that your
4 supervised release could be revoked. And if it is revoked, you
5 would be returned to prison and be required to serve in prison
6 all or part of your term of supervised release without credit
7 for the time that you had been on supervised release. So if
8 your supervised release is revoked, you would be returned to a
9 place of imprisonment and be required to serve time in prison,
10 the time specified by the laws of the United States.

11 Do you have any questions about supervised release?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Cave, do you understand that if the
14 sentence that's imposed upon you is more severe than you
15 expect, you're still bound by your plea of guilty and would not
16 for that reason, in other words the reason of a more severe
17 sentence than you expected, that would not give you a basis to
18 withdraw your plea of guilty. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Cave, if the Court accepts your plea
21 of guilty, you will be found guilty of a felony. That could
22 work to your disadvantage later. For example, if you're later
23 convicted of another crime, the penalty in that case could be a
24 larger penalty. The penalty could increase because of your
25 conviction in this case. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, there's a petition to enter a plea
3 of guilty and a plea agreement in this case. I'm going to ask
4 Mr. Addison at this time to tell us how these documents were
5 filled out. Regarding the petition to enter the plea of
6 guilty, how the questions were given to you, how were your
7 answers received and memorialized, and how the consequences of
8 signing the plea agreement and the petition to enter the plea
9 of guilty were explained to you.

10 Mr. Addison.

11 MR. ADDISON: Thank you, Judge.

12 Judge, on or about the 26th day of February, Mr. Cave
13 met myself at my office. I provided him a copy of the plea
14 agreement and the petition to enter a plea. I asked him to
15 review those documents. Once he had completed review of those,
16 he entered my office, and we sat down and I addressed each
17 individual question with him on the petition to enter a plea.
18 The writing on the document is my own, sir, but the answers
19 there reflect the information that was provided to me by Mr.
20 Cave.

21 During the course of answering those questions, Mr.
22 Cave generated multiple questions to me, which I answered. And
23 at the end of that, Mr. Cave provided his signature at the
24 appropriate designated area.

25 In terms of the plea agreement, Your Honor, I then

1 again read the plea agreement to him, emphasizing what I
2 thought were the salient points. That generated several
3 questions from Mr. Cave, which I answered. And at the
4 completion of those questions and answers, he executed the
5 final page of the plea agreement, sir.

6 THE COURT: And then additionally, the documents were
7 both resigned again today, correct?

8 MR. ADDISON: Yes, sir. I inadvertently, and I do
9 apologize to the Court, I grabbed my file this morning, looked
10 in it, the first document I saw was the plea agreement, so I
11 assumed that the petition that Mr. Cave and I had originally
12 executed and the plea agreement were contained in my file.
13 Upon arrival at the court, I discovered that they were not. So
14 I asked the Court for the copies that we had previously
15 provided in preparation for this hearing, and Mr. Cave, after
16 explanation, re-executed the petition to enter a plea with
17 today's date and did the same with the plea agreement, Your
18 Honor.

19 THE COURT: Mr. Cave, is that all true? Did that all
20 happen that way?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Cave, on the petition to enter the
23 plea of guilty, is that your signature, in fact from February
24 26th and March 10th, on page 14?

25 THE DEFENDANT: Yes, it is, sir.

1 THE COURT: Other than the plea agreement, Mr. Cave,
2 did anyone make any threat or promise to force you or make you
3 enter any pleas here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Now, did you review the petition to enter
6 the plea of guilty, read it and review it before you signed it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Under penalty of perjury, remembering
9 that you're under oath, do you swear that each of your answers
10 in your petition to enter a plea of guilty is your answer and a
11 truthful answer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I'm going to go over just a couple of the
14 questions and answers. Thirteen (a) says what is the maximum
15 term of imprisonment and the maximum fine the law provides for
16 the offense or offenses to which you want to plead guilty, and
17 your answer is 20 years, \$250,000 fine, five years supervised
18 release, \$100 special assessment. The question asked actually
19 what the maximum term of imprisonment is, and it is correct
20 that you have recited it at 20 years. What is the maximum
21 fine, which is correctly recited at \$250,000, not to exceed.
22 However, the -- While the question doesn't ask this, you write
23 five years supervised release. Supervised release maximum is
24 actually up to -- excuse me. The supervised release maximum,
25 based upon the penalty section, is actually at least five years

1 but not more than life.

2 So let me hand to the courtroom deputy page five of
3 the petition to enter a plea of guilty. So if you agree, you
4 can note that, initial it, and Mr. Norris can initial it, as
5 well as Mr. Addison.

6 (Defendant and counsel initial document.)

7 THE COURT: Now, the original has been returned to
8 me, and it has been changed to five years supervised release
9 minimum up to life supervision. And it's initialed by all
10 three of the individuals present, Defendant, defense counsel,
11 and the Government's attorney.

12 Do you understand that answer, Mr. Cave?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Thirteen (b), is there a
15 mandatory minimum punishment required by law for the offense or
16 offenses to which you want to plead guilty? You marked yes.
17 Then in subpart it asked what is it, and you answer five years.
18 And five years is the minimum mandatory.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, additionally, let's drop back to
22 question 44, it asks are you guilty, and you answer that
23 question yes. And then question 45 asks you what did you do
24 that causes you to think you're guilty of the charge to which
25 you want to plead guilty, and you write on or about the 16th

1 day of June, 2007 -- excuse me, the 6th day of June of 2007, in
2 the District of Nebraska I received and distributed visual
3 depictions by computer. I can't read that.

4 MR. ADDISON: I apologize for my writing, Judge. Do
5 you want me to --

6 THE COURT: Yeah, would you read it, because if I --
7 believe me, it's better than mine.

8 MR. ADDISON: And I apologize. I'm just going to
9 start from the beginning.

10 THE COURT: Okay.

11 MR. ADDISON: It says on or about the 6th day of
12 June, 2007, in the District of Nebraska, I received and
13 distributed visual depictions by computer, with said depictions
14 having involved the use of a minor engaging in sexually
15 explicit conduct and depictions of such conduct.

16 THE COURT: Mr. Cave, is that your answer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And, Mr. Cave, earlier I read to you the
19 elements of Count I in the indictment, the elements of the
20 charge of receipt and distribution of child pornography. Did
21 you commit that offense?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And did you commit each and every one of
24 the elements at the time, dates and places as set out in Count
25 I of the indictment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did you decide to plead guilty before
3 you signed the petition to enter the plea of guilty? And I
4 realize that's an odd question, but did you mentally come to
5 the conclusion I'm going to plead guilty and then signed that
6 document?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about anything
9 set out in your petition to enter your plea of guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: There's a plea agreement in this case.
12 Mr. Addison has told us how that was explained to you. Is that
13 all true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And is that your signature on the last
16 page? Actually, it's page number three?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Cave, correct me if I'm wrong, and
19 feel free to tell me if I'm wrong about this, but I would
20 imagine that when you went over the petition to enter the plea
21 of guilty and the plea agreement that you had questions about
22 what do these things mean, how do they affect me and my case, is
23 that true?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you ask Mr. Addison all of those

1 questions?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: Did he answer them to your satisfaction?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: As you sit here in open court this
6 morning, do you have any questions about the petition to enter
7 the plea of guilty, the plea agreement, the indictment or
8 anything that's occurred thus far at this hearing?

9 THE DEFENDANT: No, sir.

10 THE COURT: And other than the plea agreement, has
11 anyone made any threat, promise or inducement to force you or
12 make you enter any pleas here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Did you voluntarily sign the plea
15 agreement on the last page?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did anyone make any other promise or
18 threat to you to sign it?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you have any questions about it or how
21 it affects your case?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Cave, you have certain constitutional
24 rights. It's very important that you understand them, because
25 a plea of guilty will waive these rights.

1 You have the right to plead not guilty to the
2 offenses charged against you in the indictment, to go to trial
3 on those charges. The right to a speedy and a public trial.
4 The right to be tried by a jury. The right to have a jury
5 determine whether or not each and every one of the elements
6 have been proven by the Government beyond a reasonable doubt.
7 The right to see and hear all witnesses and cross-examine them.
8 The right to call witnesses in your own behalf. The right not
9 to testify. No one can compel you to be a witness against
10 yourself. However, if you wish to testify, you would also have
11 the right to testify.

12 You also have the right to use the subpoena power of
13 the Court, which is an order of the Court that demands the
14 presence of witnesses or other evidence that might assist you
15 or be used by you at your trial.

16 Mr. Cave, concerning the rights that I've just read
17 to you and the rights in your petition to enter your plea of
18 guilty, do you understand that under the Constitution of the
19 United States, you have these rights and you can use each and
20 every one of these rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Cave, do you understand that if your
23 guilty plea is accepted by the Court, there will not be a trial
24 to Count I of the indictment, and that by pleading guilty to
25 that charge, you waive and give up your right to trial to that

1 charge. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Cave, do you also understand that if
4 your plea of guilty is accepted, you waive or give up your
5 right to challenge the manner in which the Government obtained
6 its evidence against you in this case. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now in that regard, a review of the
9 docket motion report in this case shows that there's a pending
10 motion to suppress, which is number 16.

11 Mr. Addison, do you have a motion regarding that
12 motion?

13 MR. ADDISON: Judge, based upon the purpose of
14 today's proceeding, I'm going to make an oral motion to
15 withdraw that previously-filed motion to suppress.

16 THE COURT: Mr. Cave, do you understand that there is
17 a pending motion to suppress? That motion in some way, I won't
18 go into the specifics, but challenges the admission of certain
19 evidence, whether or not it is lawfully admissible against you
20 in court. Your attorney has told me on the record that he
21 moves at this time in your behalf to withdraw that motion to
22 suppress. That means that that motion will not be heard, and
23 there will be no ruling on that motion. Do you understand
24 that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, since that involves just what we've
2 been talking about, do you understand that if you plead guilty
3 in this case, you waive or give up your right to challenge the
4 manner in which the Government obtained evidence against you,
5 for example, the way the Government searched for evidence or
6 questioned you? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. And do you understand Mr.
9 Addison's, your attorney's, motion to withdraw the motion to
10 suppress, number 16?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Any questions? I'll be glad to give you
13 time to speak with Mr. Addison off the record, if you wish.

14 THE DEFENDANT: None, sir.

15 THE COURT: I'll accept the statements made by the
16 Defendant in this matter and counsel, and I will grant the oral
17 motion, and motion to suppress, number 16, is deemed withdrawn
18 at this time.

19 Now, Mr. Cave, do you understand your constitutional
20 rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In order to get you to give up or waive
23 these rights, has anyone connected with law enforcement, or for
24 that matter anyone else, threatened you, directly or
25 indirectly, used force against you, or promised you anything

1 other than the written plea agreement?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you discussed this matter and your
4 constitutional rights and the withdrawal of your motion to
5 suppress with Mr. Addison?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you freely and voluntarily waive or
8 give up all of your constitutional rights with respect to this
9 criminal proceeding?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Cave, after consideration of your
12 responses given in open court under oath this morning to
13 questions asked, I find that you fully understand your
14 constitutional rights, freely, voluntarily, knowingly, and
15 intelligently waive those rights, with a full understanding of
16 the consequences of waiving those rights.

17 In particular, I find you're competent, competent to
18 plead. You understand the nature of the charges against you,
19 the possible penalties, the indictment, and the petition to
20 enter a plea of guilty and the plea agreement.

21 I further find that you understand that as a
22 consequence of a plea of guilty, there will be no trial
23 concerning Count I of the indictment, the charge of receipt and
24 distribution of child pornography. I also find that you
25 understand by pleading guilty you waive your right to trial and

1 that you understand that your answers to my questions could be
2 used against you if there's a later prosecution for perjury or
3 false statement relating to this criminal proceeding.

4 Therefore, I accept your waiver of your rights.

5 THE COURT: Mr. Cave, earlier I asked you about
6 making an agreement, understanding that if anything occurred at
7 this hearing you didn't understand, we'd stop the hearing, and
8 you'd have a chance to speak with Mr. Addison off the record.
9 Do you remember that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Cave, whether or not you decide to
12 enter a plea of guilty is not really any of my concern.
13 However, if you decide to enter the plea, and as it appears
14 from these documents you have so decided, it is my obligation
15 to make sure that plea is freely, voluntarily, knowingly and
16 intelligently given. That can only occur if you have a full
17 understanding of all the things we've talked about. So, again,
18 I'd be glad to give you an opportunity to speak with Mr.
19 Addison off the record if you have any questions.

20 Do you have any questions?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any questions about the plea
23 agreement, the petition to enter the plea of guilty, the
24 indictment, the withdrawal of your motion to suppress, or
25 anything else that's occurred at this hearing this morning?

1 THE DEFENDANT: No, sir.

2 THE COURT: Well, Mr. Cave, knowing and understanding
3 everything that's in your petition to enter your plea of
4 guilty, in the plea agreement, and the indictment, my question
5 to you at this time is how do you plead to Count I of the
6 indictment, receipt and distribution of child pornography?

7 THE DEFENDANT: Guilty, sir.

8 THE COURT: Are you freely and voluntarily pleading
9 guilty to that count?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: To get you to plead guilty, has anyone
12 threatened you, directly or indirectly, used force or promised
13 you anything other than the written plea agreement?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Cave, at this time I'm going to ask
16 Mr. Norris, as the Government's representative, to set out on
17 the record what is referred to as the factual basis. In
18 stating the factual basis, Mr. Norris will tell us what facts
19 the Government would have expected to prove beyond a reasonable
20 doubt at trial if you had gone to trial on Count I.

21 Mr. Norris.

22 MR. NORRIS: Thank you, Your Honor.

23 Prior to June 10th of 2007, Detective Corey
24 Weinmaster of the Lincoln Police Department carried on an
25 online chat with an individual later determined to be Mr. Cave.

1 Detective Weinmaster was posing as a 15-year-old girl. During
2 the chats, Mr. Cave sent five images of what appeared to be
3 child pornography to Detective Weinmaster. Detective
4 Weinmaster forwarded the information to Investigator Matt
5 Nicholas of the Nebraska State Patrol.

6 On July 19th of 2007, the Nebraska State Patrol
7 executed a search warrant at the residence of Mr. Cave in
8 Omaha, Nebraska. A laptop, a Dell computer, and other
9 electronic media were seized from the residence. The following
10 day, a second laptop computer was recovered from a dumpster
11 near the library at the Gene Leahy Mall. The serial number to
12 the abandoned computer was used to trace the computer back to
13 the Cave family.

14 Because Mr. Cave was a recruiter for the marine
15 corps, the computers were forensically reviewed by the
16 Department of Defense. Alison Sutton of the Department of
17 Defense conducted the analysis. Approximately 194 image files
18 and four video files displayed children who appeared to be
19 minors in various stages of undress, and in some instances,
20 engaged in sexual acts or the lascivious display of genitalia.

21 The images were forwarded to the National Center for
22 Missing and Exploited Children, where known victims from the
23 Morgan, Carly, Gage, Brittany and Angeles series were
24 identified.

25 THE COURT: Mr. Addison, do you wish to be heard as

1 to the factual basis?

2 MR. ADDISON: Judge, for purposes of this hearing, I
3 believe that's suffice. I would denote that in terms of actual
4 number of pictures that are involved, we don't have an
5 agreement on that yet, but I would just put that -- reflect
6 that. There is a dispute as to those numbers.

7 MR. NORRIS: That's true. I agree to that. That's
8 why we indicated that there were 194 images that included some
9 in various stages of undress, which would not otherwise qualify
10 as child pornography.

11 THE COURT: Mr. Cave, do you agree that what you just
12 heard would be the Government's evidence against you if you had
13 gone to trial on Count I?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Cave, I'm going to make the following
16 written report and recommendation to Judge Smith Camp. I'm
17 going to find and conclude that your plea of guilty is
18 knowingly, intelligently and voluntarily entered. That a
19 factual basis exists for the plea. That provisions of law and
20 rule involving the submission of guilty pleas have been
21 complied with. The petition to enter a plea of guilty on a
22 form approved by the Court was completed by you, your attorney,
23 and the Government's attorney, and is in the file. There is a
24 written plea agreement in the file, signed by the parties, you,
25 your attorney, and the Government's attorney. And there are no

1 agreements or stipulations outside of the written plea
2 agreement.

3 I'll recommend to Judge Smith Camp that she accept
4 your plea of guilty, find you guilty, and accept the written
5 plea agreement.

6 I'm signing an order on sentencing schedule.
7 Remember that that presentence report is in writing. There are
8 several dates about the creation of that document. The order
9 concludes with a sentencing before Judge Smith Camp of June
10 2nd, 2008, at 1:00 p.m.

11 Lastly, I reviewed the motion report, and at this
12 time, after the withdrawal of number 16, there are no motions
13 pending.

14 Mr. Addison, anything further in this matter today?

15 MR. ADDISON: Nothing further, Judge. I just would
16 denote that I have a report from Pretrial Services that
17 reflects Mr. Cave is in compliance, and they'd recommend his
18 continued release. And I'd ask you --

19 THE COURT: I'm glad you brought that to my
20 attention. I do have that -- I did have that report and forgot
21 to deal with it, and I should deal with it.

22 The recommendation dated today is that based upon the
23 Defendant's performance on bond, Pretrial Services respectfully
24 recommends the Defendant remain on bond consisting of the same
25 conditions pending sentencing in this matter.

1 Mr. Norris, do you have any objection?

2 MR. NORRIS: No, Your Honor.

3 THE COURT: Well, Mr. Cave, let me note, first of
4 all, that you have successfully existed under the conditions of
5 release, which is good. Not everybody does. Secondly, I guess
6 just to warn you that those conditions remain in full force and
7 effect, and they will until they're either modified by the
8 Court or until you're sentenced on Count I.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Addison, anything else?

12 MR. ADDISON: Nothing further. Thank you, Your
13 Honor.

14 THE COURT: Mr. Norris?

15 MR. NORRIS: No, Your Honor.

16 THE COURT: We're in recess. Thank you.

17 (10:46 A.M. -- END OF HEARING)

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TRANSCRIBER'S CERTIFICATE

I hereby certify that the previous pages reflect truly, accurately and completely the recording of this proceeding as transcribed by me to the best of my ability.

In testimony whereof, I have hereunto set my hand this 18th day of March, 2008.

s/ Diana Wilkey
Transcriber